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09/852,498	05/10/2001	Gary D. Jerdee	71163	7129

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EXAMINER

AFTERGUT, JEFF H

ART UNIT

PAPER NUMBER

1733

DATE MAILED: 06/09/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/852,498

Applicant(s)

JERDEE ET AL.

Examiner

Jeff H. Aftergut

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 9-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 9, 10, 12, 13, 15, 16, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taft et al in view of either one of Bartz et al '122 (newly cited) or Bartz et al (newly cited) '433 further taken with either one of PCT 98/38376 or PCT 98/38375 and Ballard.

Taft et al suggested that it was known at the time the invention was made to form a carpet by tufting carpet fiber into a primary backing and joining this tufted primary backing to a secondary backing with an adhesive material which comprised either ethylene methyl acrylate or ethylene butyl acrylate. The applicant is more specifically referred to column 1, lines 44-57, column 3, line 73-column 4, line 15 and column 4, lines 61-63 of Taft. In Taft et al, the carpet fibers were formed from wool, cotton rayon or nylon (column 1, lines 58-61) while the primary and secondary backings were formed from polypropylene or polyester, for example, column 1, lines 62-72. The reference suggested that a suitable manner for coating the primary backing subsequent to the tufting with the adhesive coating would have included extrusion coating, column 6, lines 70-column 7, line 2. The reference suggested that those skilled in the art would have mixed the copolymer of ethylene and butyl acrylate with a synthetic rubber compound which included styrenic copolymers of butadiene (column 3, lines 45-48). The reference did suggest that one skilled in the art would have included within the hot melt polymer an atactic polypropylene as a base resin for the hot melt composition. It is not clear whether the claims at hand have excluded this base resin (as "consisting essentially of" language has been used and the resin of Taft was used as an adhesive just like applicant, the atactic polypropylene being used

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because of its compatibility with the conventional tackifiers). The reference failed to make mention of the extrusion coating of the same wherein the tufted primary backing, the extruded adhesive and the secondary backing were fed into a nip formed by nip rollers wherein one roller was a rubber covered roller and the other roller was a hard chilled roller.

The references to either one of Bartz et al '122 (newly cited) or Bartz et al (newly cited) '433 suggested that conventional hot melt adhesives employed as a base for the hot melt either an atactic polypropylene or polyethylene, see column 1, lines 28-37, column 9, lines 31-54 and column 4, lines 35-37 of Bartz '433 and column 1, lines 31-39, column 4, lines 35-37, column 9, lines 33-57 of Bartz '122. It should be noted that the inclusion of polyethylene including low density and high density polyethylene as an alternative base resin for the atactic polypropylene was suggested by either one of Bartz '433 or Bartz '122. Additionally, the claims at hand clearly included a blend of the ethylene and butyl acrylate copolymer with a synthetic rubber like styrenic copolymers of butadiene and high or low density polyethylene (note that the distinct polymers were not limited to a single distinct polymer but rather included "at least one" which implies that multiple "distinct polymers" were included in the claim). The references to Bartz '122 or '433 suggested that the use of low or high density polyethylene would have been a known functionally equivalent resin for a hot melt base resin and the applicant is advised that it is well settled that where, as here, two equivalents are interchangeable for their desired function, an express suggestion of the desirability of the substitution of one for the other is not needed to render such substitution obvious, see In re Fout, 213 USPQ 532, In re Siebentritt, 152 USPQ 618. The references to Bartz '122 and '433 both suggested that it was known to extrude the compositions of hot melt materials therein.

In the art of making carpets, it was notoriously well known at the time the invention was made to feed the tufted primary backing, the extruded adhesive and the secondary backing into a nip formed by rollers as evidenced by either one of PCT '376 or PCT '375. The references to PCT '375 (page 48, lines 3-30, Figure 7) and PCT '376 (page 48, lines 3-30, Figure 7) both suggested that the nip would have included a chill roll and a second roll. The references both suggested that an ethylene adhesive material would have been applied onto a primary backing prior to introduction into a nip where a secondary backing was also disposed. The references did not expressly suggest that the nip arrangement would have included a cooled hard roller and a soft rubber covered roller, however both references suggested that the size of the roller as well as the pressure applied by the roller would have been determined through routine experimentation.

The reference to Ballard suggested that it was known to join a primary backing which included tufted fibers thereon to a secondary backing with a thermoplastic adhesive in a nip which included a chilled roller and a rubber covered roller. More specifically, the applicant is referred to column 4, lines 32-column 5, line 30 for a general description of the nip 13 formed by the water chilled roller 15 (held at 50-55 degrees F) and the rubber covered roller 14 which was 6 inches in diameter. The references clearly suggested that one skilled in the art at the time the invention was made would have incorporated a roller nip arrangement for pressing a secondary backing to a primary backing with a thermoplastic adhesive there between wherein the adhesive would have suitably been provided by extrusion coating the adhesive material. It would have been obvious to utilize a nip for forming a joint between a primary backing and a secondary backing in a tufted carpet as the references to each of PCT 98/38376 or PCT 98/38375 suggested such manufacture when extruding the adhesive for the bond as the reference to Taft et al

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suggested such extrusion processing for providing the adhesive wherein one skilled in the art of hot melt adhesives would have readily appreciated that for the hot melt base resin one would have utilized either atactic polypropylene or (high or low density) polyethylene as suggested by either one of Bartz '122 or Bartz '433 and the reference to Ballard suggested that a rubber covered roll as well as a chilled roll would have been used for forming the nip in the bonding arrangement.

3. Claims 11, 14, 17, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as set forth above in paragraph 2 further taken with Kerr.

The references as set forth above clearly suggested that a roller nip would have been provided to facilitate the lamination of the primary backing and the secondary backing in the manufacture of a carpet wherein the specific adhesive composition was used to join the backings together and wherein the specified composition would have been applied via extrusion. The references additionally suggested that one skilled in the art would have utilized a rubber covered roller and a hard chilled roll in the nip arrangement, however there is no specific disclosure as to the hardness of the rubber covering the roll in the nip arrangement. It should be noted that each of PCT '375 and PCT '376 suggested that those skilled in the art would have optimized the amount of pressure that was applied in order to attain the degree of bonding desired, for example. Kerr suggested that a roller nip would have included a hard roll 44 and a soft rubber roll 42 which was provided with a hardness for the rubber of between 40-80, preferably 50 Shore A (note that 40-80 Shore A is about 9-40 Shore D) so that the pressure on the carpet assembly would not have been too great as the assembly passed through the nip, see column 3, lines 58-64. It should be noted that Kerr was assembling layers which were extruded onto a tufted product. It

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should be noted that the specified size of the nip roller was suggested by Ballard. It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a soft rubber roll as suggested by Kerr in the nip when joining a backing to a carpet (whereby the pressure applied would have been even and not excessive) in the process of laminating a backing to a carpet as suggested above in paragraph 2.

***Response to Arguments***

4. Applicant's arguments with respect to claims 9-20 have been considered but are moot in view of the new ground(s) of rejection.

The applicant essentially argues that the reference to Taft required that one skilled in the art would have incorporated an atactic polypropylene in the hot melt composition and that such was excluded from the claim. The Office previously took the position that it was not clear that the atactic polypropylene was excluded from the claim. The applicant also amended the claim to recite that "elastomers" were not part of the materials added in the resin composition used as the hot melt and argued that the rubbers of Taft were now excluded from the claim. However as currently listed, the "distinct polymers" which were added to the ethylene butyl acrylate included styrenic copolymers of butadiene as well as low and high density polyethylene. The reference to Taft as part of the rubber materials useful therein suggested the use of styrenic copolymers of butadiene (column 3, lines 42-48). Additionally (without admission that the claims at hand clearly exclude atactic polypropylene), it was known to employ as a base for a hot melt adhesive either low or high density polyethylene as an alternative to atactic polypropylene as suggested by either one of Bartz '122 or Bartz '433. Clearly, the specified polymer used as a hot melt adhesive was known for joining carpet backings together (primary to secondary backings) wherein the

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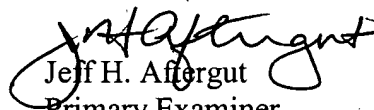
material was extruded to join the same. The applicant argues that the polymers of the PCT references as well as Ballard are different, however this is immaterial to the question of obviousness as these references were cited to show how one would have processed the conventional hot melt adhesives of Taft as modified by Bartz '122 or Bartz '433 to join a secondary backing to a primary backing.

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff H. Aftergut whose telephone number is 703-308-2069. The examiner can normally be reached on Monday-Friday 6:30-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael W. Ball can be reached on 703-308-2058. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

  
Jeff H. Aftergut  
Primary Examiner  
Art Unit 1733

JHA  
June 8, 2003